

Birth control battle

Access to Plan B, a form of emergency contraception, has become a new battleground issue for the religious right nationwide--and right here in Sacramento

By Chrisanne Beckner

Kim Smith, a young mother in her mid-20s, sat fretting in the car with her 5-month-old daughter, Hannah, on a Saturday evening last winter. Her husband of almost two years had run into the Longs Drugs on Folsom Boulevard to pick up a dose of Plan B, better known as the morning-after pill. The night before, the couple had experienced the kind of contraceptive malfunction that enlarges families all the time: The condom had broken. Though Plan B can prevent pregnancy, it must be taken within 72 hours of unprotected sex, and the sooner the better.

"It took him close to 20 minutes," said Smith by phone from her house in Rancho Murieta, with Hannah audibly fussing in the background. "When he came back, he was about to put his hand through a window."

The pharmacist on duty, according to a complaint filed with the California Board of Pharmacy, had refused to fill Smith's prescription, even after she and her husband went in again to try and convince him.

"This man very obviously had his own issue," said Smith. "He kept telling me, 'If you and your 'boyfriend' were not so irresponsible, you would not have to be dealing with this.'"

Smith's complaint detailed how the pharmacist, identified as David Becker-Ellison, also had refused to accept the prescription into the system and transfer it to another pharmacy. By law in California, a pharmacist who has ethical or religious objections to emergency contraception must notify his employer beforehand. According to Lilly Spitz, chief legal counsel for Planned Parenthood Affiliates of California, "it's up to the employer to accommodate them by employing someone else who can dispense [emergency contraception]."

"Mr. [Becker-Ellison] was the only pharmacist on duty at Longs at that time," Smith's complaint reads. "We left the pharmacy without the prescription and with no option for having it transferred to another pharmacy."

The clock was ticking, but even after speaking with Smith's physician, the pharmacist refused to sell Plan B to Smith.

Attempts to contact Becker-Ellison through his employers and the California Board of Pharmacy were unsuccessful.



Illustration By Sandra Hoover

Phyllis Proffer, a spokeswoman for Longs Drugs, could not comment specifically on Smith's complaint but did describe the store's policy. "We want to serve the needs of all our customers," she said, "but we want to have a respectful environment for our employees, too." If a pharmacist has a moral objection, Proffer said, he or she must inform the company in writing. "And the pharmacist has to find someone else to fill it." When pharmacists with moral objections are following the store's policy, Proffer said, the experience should be seamless and invisible to the customer.

"Another baby wouldn't have been horrible," Smith says now, months after the incident. She and her husband are financially secure enough that they would have been able to care for two children, if necessary. But the couple had tightened the purse strings so that Smith could stay home with Hannah, now 11 months old. A second child would have made that impossible. "It would have been crazy and financially not doable for us. A second baby would have put me back to work."

After leaving Longs, Smith got on the Internet and researched California's emergency-contraception-access laws for the first time. "As of January 1, they're required to fill prescriptions for emergency contraception--especially if written as a prescription. ... My blood was boiling. I went from scared to pissed."

Smith got a new prescription on Monday morning, took it to a different pharmacy and was able to avoid an unintended pregnancy. Though Smith didn't realize it, emergency contraception is available in California even without a prescription. Pharmacists who go through a short training program are allowed to sell it on request.

"I had no idea. You never see anything posted in a pharmacy," said Smith.

Smith said she recently got a letter from the pharmacy board saying Becker-Ellison was fined \$750, but even months after the incident, Smith can't believe that a pharmacist would take the future of her family into his own hands.

Virginia Herold, acting executive director for the California Board of Pharmacy, said that this was the first time a California pharmacist had been cited and fined for obstructing a patient in obtaining a prescription drug.

Though Smith and her husband could have managed another child, she believes that not every woman can.



With an infant daughter (shown), Kim Smith wanted emergency contraception to avoid a second pregnancy. A local pharmacist refused to sell it to her.

Photo By Larry Dalton

"I'm sure this happens to lots and lots of girls who aren't in my situation," she said. "If you realize you shouldn't be having a child, you shouldn't be."

The morning after

After decades of wanting more flexible birth control, women now have access to an almost perfect means of backup contraception, one that doesn't need to be taken at the same time every day or implanted under the skin or inserted in advance. And no one has to encase any part of himself or herself in rubber. Women can call a hotline day or night--(888) NOT-2-LATE--and get a list of the five nearest pharmacies that dispense it without a prescription, and, almost miraculously, it can prevent pregnancy three days after sex. And yes, way back in 1999, the Food and Drug Administration said it was safe. In fact, it's so safe that FDA staff thought it should be sold over the counter: It contains progestin, the same synthetic hormone found in birth-control pills.

With all this good news, wouldn't women keep emergency contraception in their medicine cabinets all the time? Apparently not. The Guttmacher Institute, a research institute focusing on reproduction, still counts 6 million unintended pregnancies a year in the United States: "1.3 million end in abortion." In California, more than a quarter of the nearly 900,000 women who get pregnant each year have abortions.

Emergency contraception, or the morning-after pill, was supposed to end all that. Plan B--two emergency contraception pills taken 12 hours apart starting as soon as possible after sex--can prevent 89 percent of pregnancies. It sounds like a dream come true for both sides of the abortion debate, since women can end unwanted pregnancies before they even begin, but for some, Plan B blurs the line between prevention and abortion, and there's the rub.

Plan B works by halting ovulation. However, there's some slim chance that if taken after ovulation, Plan B will keep a fertilized egg from attaching to the uterine wall. If the fertilized egg is already attached, well, that's the medical profession's definition of pregnancy, and Plan B won't have any effect at all. In other words, it won't cause an abortion.

If you're not aware of Plan B, blame the FDA. The manufacturer has been trying to get Plan B cleared for over-the-counter sales for years, but the FDA has consistently kept it from showing up on pharmacy shelves right next to the rainbow of condom boxes. In an age when conservative reproductive policy is on the rise nationwide, abstinence-only programs have been fattened up with federal dollars, health care for poor women has gotten skimpier, and abortion rights have come under constant assault in many states, conservative politics are hampering a woman's access not just to abortion, but to emergency contraception.

In California, where access is comparatively easy, many health-care providers say that education is the sticking point. Women need to know they can walk up to a trained pharmacist and buy Plan B without a prescription.

But Spitz, with Planned Parenthood, warned that women often feel uncomfortable requesting emergency contraception in a crisis situation. "Our No. 1 priority is an attempt to educate the public to always have emergency contraception on hand."

Physicians could help spread the word, but increasing medical costs and insufficient care for poor women limit medical care and consultation. The California Family Health Council claims that “more than 60 percent of Medi-Cal recipients report difficulty finding a doctor.”

Even women with insurance can face barriers. In California, if insurance providers cover prescription drugs, they’re obligated to cover contraceptives, but they don’t have to cover all of them. “They just have to have a representative sample,” said Bobby Peña with the California Association of Health Plans.

Emergency contraception is pretty easy to get in California, said Kimberly Salter, president of California NOW, “but if you’re in the boondocks or the deep desert, it can be more difficult.”

Pharmacists who don’t want to prescribe may stall or say they don’t have it in stock. “We’re trying to help women learn it’s better if they take someone with them ... someone who can advocate for you.”

There are also health-care professionals who would deliberately keep Plan B from catching on. Even in California, some pro-life nurses are refusing to distribute any kind of birth control, basing their opposition on religious doctrine.

At the root of the debate is one of the oldest and most unromantic ideas in the book: that sex is primarily a tool for procreation. According to religious teachings (especially among Catholics), teens, unmarried couples and even married couples using contraception compromise the dignity of human beings and the sexual act. If sex is separated from procreation, everybody is cheapened by the experience, relationships are fleeting, and God can’t exercise his creative powers.

If you think such conservative concerns don’t affect access here in progressive California, think again.

A pro-life stance

Jennifer Le recently pitched a legal battle to pressure her former employer, Kaiser Permanente, into accommodating the religious opposition of pro-life nurses who want nothing to do with abortion, emergency contraception or even the birth-control pill.

A registered nurse and a devout Catholic, Le, the executive director of California Nurses for Ethical Standards, was once an advice nurse, answering the phones at a Kaiser call center in Sacramento. If she received calls about abortion or Plan B, she would politely say that she couldn’t help the caller, she told SN&R. She would take down the woman’s name and number and then pass the information to another nurse, who would call back and answer questions regarding contraception and abortion. “They had accommodated, on some level, my religious opposition,” said Le.

However, in 2003, Kaiser asked advice nurses to facilitate prescriptions for contraception over the phone. Le was told by her supervisors that "her religious beliefs preventing this would not be accommodated."

"I told them I couldn't do that," said Le.

When the next call for contraception came in--they were rare, as she was working specifically on pediatric calls--Le held firm and would not assist the caller. She was then put on unpaid leave for three months to look for other work within the Kaiser system. She filed suit against Kaiser for religious discrimination in Sacramento Superior Court in June.



Photo By Larry Dalton

In her original complaint against Kaiser Permanente, Le states that the Catholic Church teaches that all life, from the moment of conception, must be protected, adding, "The Catholic Church teaches that most forms of contraception are wrong, as they negate the creative act of God."

As an emerging advocate for pro-life health-care providers, Le was willing to lose her job rather than help women access contraception.

Le's attorney, Steve Burlingham, says his client is protected by the California Fair Employment and Housing Act, which requires her employer to reasonably accommodate her religious beliefs and practices, as well as the U.S. Constitution, which guarantees freedom of religion. He asserts that Le's opposition to birth control and emergency contraception specifically is based on that small number of cases where the drug might prevent a fertilized egg from implanting in the uterine wall.

Litigation is increasing, he said, because Plan B "is not just dealing with preventing life, but ending life." As he sees it, pro-life health professionals "don't want to commit murder."

Le is asking for injunctive relief, pressuring Kaiser to change its policy "so that they would accommodate this kind of religious belief," said Burlingham.

Jeff Hausman, a public-affairs representative for Kaiser, sent along a statement saying that Kaiser respected the religious beliefs of its call nurses in relation to abortion and emergency contraception and has policies in place to "immediately refer such calls to other Call Center staff. ... In this employee's case, we worked very hard to help her find another position within Kaiser Permanente that would not be objectionable to her religious beliefs as they relate to contraception in general. However, she eventually decided to accept a position outside of our organization."

This was not Le's only battle against easy access to contraception. She first grabbed headlines earlier this year for suing the California Nurses Association with the help of the Pacific Justice Institute, also for religious discrimination. While working for Kaiser, Le researched the nurses' union and found that she objected to the union's positions on abortion and comprehensive sex education and didn't want her dues supporting these causes. She wrote a letter saying so and decided to give her money to a charity instead. The union's bargaining agreement identified five charities that would be acceptable stand-

ins, including Planned Parenthood, Doctors Without Borders, the American Heart Association, the American Cancer Society and the AIDS Foundation.

"Le found that all five of the charity options violated her sincerely held religious beliefs," reads the complaint. For instance, the American Heart Association was unacceptable because it received "over \$10 million dollars from promoting the use of a drug developed by Genentech, which supports embryonic stem cell research."

Le asked that she be able to choose her own charity, but the union did not respond to her request.

Filed in the Eastern District of the federal court, Le's case claims that the union not only discriminated against her deeply held religious beliefs, but also that it will be difficult for her to find work at other hospitals covered by the same union.

The union recently asked for the case to be dismissed, claiming that it never retaliated against Le for her decision not to pay dues, but U.S. District Judge David Levi denied the union's request. "We're facing another motion to dismiss," said Le's attorney, Kevin Snider. Oral arguments are planned for August 9, one day past SN&R's press deadline.

Though Le's case may be unusual, she said she knows of at least eight other nurses throughout California who have laid their jobs on the line rather than provide abortions or contraception. She believes that as a nation we'll soon wake up and acknowledge the harm caused by our reproductive policies.

"To call them reproductive rights is wrong," she said. "It's the right not to reproduce."

Pharmacists passing judgment

In early 2005, Planned Parenthood sent 100 volunteers into approximately 150 California pharmacies to see "what their real life experiences were in attempting to fill prescriptions for emergency contraception." Though Planned Parenthood found that a majority of women reported that they were treated with respect, "14% of the women reported that their experiences with pharmacists met with 'Subtle Disapproval,' 'Overt Disapproval,' or 'Strong Contension and Open Disdain.'"



Jennifer Le, executive director of California Nurses for Ethical Standards, gave up her nursing job rather than put her religious opposition aside and help women access birth control.

Photo By Larry Dalton

"Four pharmacists refused to fill prescriptions for Plan B even though the pharmacies had the drug in stock," reads Planned Parenthood's press release. "13% of pharmacies that did not have emergency contraception in stock refused to provide a referral to another pharmacy that stocked emergency contraception even after the volunteer asked for one."

It can certainly be argued that the pro-life stance has become more popular under the current conservative administration. Religious conservatives have always disapproved of abortion, but since President George W. Bush moved into the White House, pulling conservative Supreme Court justices and born-again politicians along on his coattails, the conservative right has turned a bunch of state battles into an all-out war. For instance, state politicians hope to see *Roe v. Wade* overturned, but they're not willing to wait. The Guttmacher Institute claims that legislation to ban abortion has already been proposed in 12 states (Alabama, Georgia, Indiana, Kentucky, Louisiana, Missouri, Mississippi, Ohio, Rhode Island, South Carolina, South Dakota and Tennessee). According to Spitz, "The purpose of passing a law that's unconstitutional is to get it before a Bush [Supreme] Court."

And the war on abortion has smeared new science, like emergency contraception. Because it might prevent implantation, women are sometimes denied access, even in

the hour in which they're most vulnerable--after a sexual assault, for instance.

"You have an entire movement to force hospitals to provide morning-after pills and even abortions--even Catholic hospitals!" said Le. "Why should a woman have the right to go into any doctor's office and force them to provide any procedure?"

Even in the case of rape, Le doesn't support emergency contraception. "A child in the womb is a child in the womb," she said. "It doesn't matter, the behavior of the parents."

A time for Mercy

In January, Catholics for a Free Choice, a pro-choice Catholic organization in Washington, D.C., released a report about which Catholic hospitals around the country provide victims of sexual abuse with emergency contraception.

On behalf of the Catholic organization, researchers from Ibis Reproductive Health first called receptionists in the emergency departments of Catholic hospitals in April 2005 and asked whether they provided emergency contraception to victims of sexual assault.

According to the report, an unnamed representative of Mercy General Hospital, the only Sacramento hospital included in the study, said the hospital would not provide emergency contraception under any condition.

The researchers then called the nurse managers of the hospitals two months later to ask for details. In the case of Mercy, "We asked specifically for the nurse manager," said Teresa

Harrison, senior project manager with Ibis. "We left messages three times. We never got a call back."

Michelle Fortik, Catholic Healthcare West's manager of marketing and communications, said by phone that "the report was in error. ... Our policy is to absolutely extend emergency contraception to victims of sexual assault." But a review of the hospital's guidelines, as provided by Fortik, also makes a distinction based on implantation.

"If the intention in using [emergency contraception] is to prevent conception by preventing ovulation, there is no moral objection to its use. If the intention is to prevent implantation of the fertilized ovum, its use is morally objectionable. ... A Catholic hospital that does not offer [emergency contraception] for pregnancy prevention after rape may fulfill its responsibility to rape victims by 'instructing the patient concerning the options for pregnancy prevention and by transferring the patient to another medical facility or another physician' [Brownfield v. Daniel Freeman Marina Hospital]."

Though Fortik explained that Mercy was following the law and providing emergency contraception and compassionate care to victims, she refused SN&R's request to talk directly with emergency-room personnel.

According to Catholics for a Free Choice, "five percent of women who have been sexually assaulted become pregnant as a result of the attack--with the majority undergoing elective abortion."

But like Le, who finds all contraception unacceptable, Catholic hospitals have a mandate. "A potential obstacle to the provision of emergency contraception in Catholic hospitals is the *Ethical and Religious Directives for Catholic Health Care Services* developed by the US Conference of Catholic Bishops," says the report by Catholics for a Free Choice. "These guidelines were designed to ensure that the nation's 611 Catholic hospitals do not violate Catholic teaching which prohibits the use of artificial contraception."

Though California is famously supportive of contraception access, the report found that more than a third of Catholic hospitals surveyed failed to protect rape victims from resulting pregnancies. "Our results show that 35% of respondents in the mystery client survey indicated that emergency contraception is not available at their hospital for sexual assault patients. Among these respondents, only about half (53%) gave the caller the name and telephone number of another facility where emergency contraception might be available; half of those referrals (53%) actually lead to a facility that provides emergency contraception."

Over-the-counter status

Though Le's case seeks to protect the conscience of the provider, and Catholic hospitals sometimes follow policies to protect every fertilized egg, the federal government has used a whole different process to limit Plan B's distribution.

In 2003, the FDA was asked by the manufacturer to allow Plan B to be sold over the counter without a prescription throughout the country. The plan was reviewed by FDA experts and won overwhelming approval, but a small minority balked, claiming that the manufacturer had not proven that young women were able to take Plan B safely without the oversight of a doctor--even though women as young as 14 were included in the studies.

The FDA's May 2004 letter to the manufacturer denied Plan B over-the-counter status. Since the two administrators who normally would sign such a letter disagreed with the decision, the letter was signed by Steven Galson, the acting director for the Center for Drug Evaluation and Research.



Photo By Larry Dalton

By July 2004, the manufacturer had revised its proposal and suggested selling Plan B over the counter to women 16 and older. It would remain available by prescription to women younger than 16.

Since then, the agency repeatedly has considered and then stonewalled Plan B's move to over-the-counter status.

"The reasons for this refusal appear to have nothing to do with the safety or effectiveness of Plan B--the only considerations that are the proper purview of the FDA," wrote Nancy Northup, president of the Center for Reproductive Rights, in a published letter to President Bush.

In August 2005, former FDA Commissioner Lester Crawford announced that once again plans to make Plan B available over the counter were stalled, this time to collect public testimony.

This decision was the last straw for at least one powerful woman in the FDA. In her resignation letter, made public last summer, Susan Wood, former director of the FDA's Office of Women's Health, wrote, "The recent decision announced by the Commissioner about emergency contraception, which continues to limit women's access to a product that would reduce unintended pregnancies and reduce abortions is contrary to my core commitment to improving and advancing women's health. ... I can no longer serve as staff when scientific and clinical evidence, fully evaluated and recommended for approval by the professional staff here, has been overruled. I therefore have submitted my resignation."

In November 2005, the U.S. Government Accountability Office released a report stating, "The Plan B decision was not typical of the other 67 proposed prescription-to-[over-the-counter] switch decisions made by FDA from 1994 through 2004. The Plan B OTC switch application was the only one during this period that was not approved after the advisory committees recommended approval."

Women's-rights groups were understandably skeptical when the FDA made its surprise announcement on July 31: "FDA Announces Framework for Moving Emergency Contraception Medication to Over-the-Counter Status." This time, the FDA is only considering over-the-counter sales to women 18 and older.

"The OTC version of Plan B would not be available at gas stations, convenience stores, etc., but only to those pharmacies agreeing to (1) keep the OTC version of the drug behind the pharmacy counter and (2) dispense the drug only upon the production of a valid photo

identification card establishing the age of the consumer," read the letter the FDA sent to the manufacturer.

"In particular, we would like to learn more about your plan to routinely monitor these pharmacies to make sure they comply with the restricted distribution plan. ... If after our discussions we conclude that the CARESM [Convenient Access, Responsible Education] Program isn't sufficiently rigorous to prevent the OTC version of Plan B from being used by young girls who can't safely use the product without the supervision of a practitioner licensed by law to administer the drug, Plan B will remain Rx-only for women of all ages."

Even after years of wrangling, if the FDA's recommendations are followed, California will still offer greater access than the federal standard. Women of all ages in this state will still be able to buy emergency contraception from the majority of pharmacists--most of whom appear to be very supportive of easy access. But throughout the rest of the country, 18-year-olds will have to be brave enough to ask the guy behind the counter to grab a pack for them.

"Even if the FDA makes Plan B available OTC for some women, pharmacy access to emergency contraception will continue to be especially crucial for younger women, undocumented women, or women without proper identification trying to prevent pregnancy within the short window of time in which emergency contraception is effective," said Belle Taylor-McGhee, executive director of Pharmacy Access Partnership, in a press release.

According to Taylor-McGhee and others, the FDA's letter regarding Plan B has a lot more to do with machinations in Washington than it does with women's health. The July 31 letter to Plan B's manufacturer was signed by Andrew von Eschenbach, the acting commissioner of the FDA--a man currently involved in confirmation hearings.

Taylor-McGhee claims that "Dr. von Eschenbach openly admitted that the move was strategically timed to defuse the Plan B issue so as to not impact his confirmation hearings."

And there's good reason. Senators Hillary Clinton of New York and Patty Murray of Washington vowed to "maintain our hold on Dr. von Eschenbach's nomination until a decision is made."

"Rather than moving this process forward and doing right by the American people, the Administration is continuing to play a game of smoke and mirrors the day before Dr. von Eschenbach's Senate confirmation hearing," read a joint statement released by Murray and Clinton.

A state-by-state fight

Even as emergency contraception remains a lightning rod for the nation's ethical and religious feelings about birth control and abortion, women's health in general has become a heated battleground for states' rights. Not only are states preparing to limit abortion within their borders, but also, according to the Guttmacher Institute, of the 81 state bills on reproductive health passed in the first half of 2006, 14 measures supported "sexual and reproductive health and rights," while 37 were "antithetical."

With battles still raging, there are recent victories on both sides, proving that Americans are anything but decided about a woman's right to choose. Recently, voters in California shot down a law that would have delayed a minor's abortion until her parents consented (though

Californians will get a chance to reconsider the issue this November), but nationally, the trend goes the other way. President Bush likely will sign a bill that makes it illegal to take a woman across state lines to avoid her home state's parental-notification laws.

In this political climate, some conservatives are eagerly awaiting the Supreme Court's decision to reconsider the validity of *Roe v. Wade*. If a woman's privacy and health-care rights are limited, emergency contraception, from over the counter or behind it, might see its day in the sun after all. If abortion is no longer safe and legal throughout the nation, emergency contraception might become the nearest thing to a woman's right to choose.